IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 807 OF 1990

Dilip Pandurang Kadam]
aged about 31 years]
Occupation : Agriculture &]
Business, Resident of Shirale]..Appellant
Kadamwadi, Taluka Shirala](Ori.Accused 1)

versus

State of Maharashtra] ..Respondents

Mr. Ashok Mundargi with Mr. Prakash Naik for the Appellant - Original Accused No.1.

Dr. F. R. Shaikh, APP for the Respondents - State.

WITH

CRIMINAL APPEAL NO. 30 OF 1990

State of Maharashtra]..Appellant

versus

1. Dilip Pandurang Kadam]
age 31, Occ: Agri and]
Business]
2. Dinkar Dhondi Kadam]
age 38, Occ:Agriculture]
3. Dattatraya Dhondi Kadam]
age 38, Occ: Agriculture]
4. Hanmant Dhondi Kadam]
age 28, Occ: Agriculture]
5. Mahipati Dhondi Kadam]
age 27, Occ:Agriculture]
6. Sou. Shalan Dattatraya]
Kadam, age 26]
Occ: Household work]
7. Sou. Shamal Dinkar Kadam]
age 32, Occ: Agriculture]
8. Sou. Kusum Krishna Patil]

age 22, Occ:Agriculture]
9. Smt. Putalabai Maruti]
Kadam, age 70]
Occ: Agriculture]
10. Pandurang Maruti Kadam]
age 53, Occ:Agriculture]..Respondents
All R/o. Shirala -](Ori. Accused
Kadamwadi, Tal:Shirala] Nos. 1 to 10)
Dist: Sangli]

Dr. F. R. Shaikh, APP for the State.
Mr. S. A. Pawar for the Respondent Nos. 1 to 10.

WITH
CRIMINAL REVISION APPLICATION NO. 4 OF 1991

Sau. Mangal Vilas Pawar]
R/o. At and Post Shirala -]..Appellant
Kadamweadi, Taluka Shirala](Ori.Complainant/
Dist : Sangli] Informant)
versus
1. Dilip Pandurang Kadam]
age 31, Occ: Agri and]
Business]
2. Dinkar Dhondi Kadam]
age 38, Occ:Agriculture]
3. Dattatraya Dhondi Kadam]
age 38, Occ: Agriculture]
4. Hanmant Dhondi Kadam]
age 28, Occ: Agriculture]
5. Mahipati Dhondi Kadam]
age 27, Occ:Agriculture]
6. Sou. Shalan Dattatraya]
Kadam, age 26]
Occ: Household work]
7. Sou. Shamal Dinkar Kadam]
age 32, Occ: Agriculture]
8. Sou. Kusum Krishna Patil]
age 22, Occ:Agriculture]
9. Smt. Putalabai Maruti]
Kadam, age 70]
Occ: Agriculture]
10. Pandurang Maruti Kadam]
age 53, Occ:Agriculture]..Respondents
All R/o. Shirala -](Ori. Accused
Kadamwadi, Tal:Shirala] Nos. 1 to 10)
Dist : Sangli]
11. The State of Maharashtra]..Respondents

Mr. Prabhu i/b. A.V. Bandiwadekar for Appellant.
Mr. Ashok Mundargi with Mr. S.A. Pawar for Respondent No.1.

CORAM : D. G. DESHPANDE, &
S. R. SATHE, JJ.

DATE : 29TH MARCH, 2007.

ORAL JUDGMENT : (Per. D. G. DESHPANDE, J.) :

1. Criminal Appeal No. 807 of 1990 is filed by the appellant - original accused No.1 against his conviction under the Arms and Explosives Act, 1959. Criminal Appeal No. 30 of 1991 is filed by the State against acquittal of all the accused from offences of rioting, unlawful assembly, assault and rape. Criminal Revision Application No. 4 of 1991 is filed by the complainant - victim Sou. Mangal Vilas Pawar against acquittal of all the accused from all the aforesaid offences.

2. Sexual offences, namely, rape, in particular, are considered very grave and serious by the society and the jurisprudence that is developed in this regard by plethora of judgments of Supreme Court and various High Courts lay down that the courts are expected to deal with the cases of sexual assault against women with utmost sensitivity. Such

cases need to be dealt with sternly and severely.

3. A socially sensitized Judge is a better statutory armour in cases of crime against woman than long clauses of penal provisions, containing complex exceptions and provisos, are the observations of the Supreme Court in **(2006) 3 SCC 771 Dinesh alias Buddha vs. State of Rajasthan,** preceded by other observations that sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity - it degrades and humiliates the victim.

. The rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis, as noted by this court in the case of Bodhisattwa Gautam vs. Subhra Chakraborty

4. Then, in this background and with this approach the rape cases are to be dealt with by the judiciary. It is because of this approach that Supreme Court in **(1996) 2 SCC 384 State of Punjab vs. Gurmit Singh & ors.** observed that the court should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases, amounts to adding insult to injury. Why should the evidence of a girl or a woman who complaints of rape or sexual molestation, be viewed with doubt, disbelief or suspicion?

5. Further in rape cases the court pose a query to the accused that why a women at the stake of her reputation, dignity and chastity should try to involve anybody with all these allegations of rape. In most of the cases the accused have no answer to these questions and if that is so the cases result in conviction (depending of course on the facts of each individual case).

6. But this approach of the apex court followed by the other High Courts including this court in cases of rape gets shattered if the facts of the present case are seen. The compassion shown to the victims of rape by the apex court and other courts cannot be said to be of universal application in each and every case because this is a case where complainant Smt. Mangal Vilas Pawar has gone to the extent of levelling false, concocted and scurrilous allegations not only of assault, use of weapons such as rifle or gun but also of rape against accused No.1 Dilip Pandurang Kadam. She has done this only for the sake of asserting the ownership and possession of land which was already sold by her husband. We are aware that one swallow does not make a summer and all victims of rape are not of the type of Smt. Mangal Vilas Pawar. But this case clearly shows that a woman like Smt. Mangal Vilas Pawar can go to the extent of taking her chastity and womanhood for the purpose of property and go to the extent of making allegations of rape.

7. We are aware that in rape cases the name of the prosecutrix should not be disclosed or made public but this is a case where in our considered

opinion such a protection cannot be made available to the prosecutrix Mangal because her entire story which was found by the trial court to be false, bogus and concocted, is also found by us, to be false, bogus and concocted. She has proved that she does not deserve the sympathy of the court and does not deserve any relaxation of the rules of evidence for proving her reckless allegations of rape by accused No.1 Dilip in broad day light in the agricultural land where the accused was accompanied by his old grand mother Putalabai Maruti Kadam - accused No.9 aged about 70 years at the time of incident, his paternal aunt accused No.7 Shamal Dinkar Kadam aged about 32 years at the time of incident plus 3-4 family members and male relatives and where 3-4 other females and males were present in the agricultural land. We do not wish to say that this case is sufficient to shatter the general image of women all over the country. Our observations are strictly restricted to the conduct of the complainant - Mangal in this case only. But this case should be an exception which the court should take into consideration while dealing with cases of rape and the exception is that women can even at the stake of their dignity, honour,

reputation and chastity go to the extent of levelling false accusations of rape for the sake of ulterior motives. Now, with this preface let us go to the facts of the case. The reasoning and judgment of the trial court, the evidence of the parties and the submissions made before us by the learned APP and counsel for the victim Mangal, and counsel for the accused and accused No. 1 Dilip Kadam, in their respective matters.

8. Complainant / Prosecutrix and victim in this case is Mangal Vilas Pawar, 24 years of age on the date of the incident. She is P.W. 9. Her mother Anandibai P.W. 10 is about 55 years of age on the date of the incident. According to the prosecution, the incident took place in the agricultural land bearing Gat No. 145/2 situate at Village Shirala-Kadamwadi. According to the complainant - Mangal this is the land of her husband Vilas Pawar and her husband was the owner and they were in possession of the land on the date of the incident and even prior thereto.

9. Vilas Pawar husband of Mangal was serving in Irrigation Department as a clerk and used to daily

commute from Village Shirala to the site of his job. He was unable to manage personally with cultivation of the lands and therefore this land and other lands were being cultivated by Sambhaji s/o. Shivram Kadam, Mahadeo s/o. Shivram Kadam and their mother Vithabai d/o. Shivram Kadam as partners in the cultivation with the said Vilas Pawar i.e. with husband of complainant Mangal or Mangal.

10. According to the prosecution on 8.4.1987 Vilas Pawar went to attend his work but did not returned home. Complainant Mangal waited for 2-3 days, made enquiry at the office and then learnt from the Village Talathi that Vilas has executed Agreement of Sale in respect of two of the family lands and also executed Sale Deed.

11. Then Mangal on 11.4.1987 gave report to the police that her husband is missing, he must have been abducted and the sale deeds were obtained by him by fraud or coercion. He also alleged that her husband was addicted to liquor. Thereafter dispute started between Mangal and accused No. 1 Dilip Pandurang Kadam and accused No. 10 Pandurang Maruti Kadam on the other side. Mangal asserting ownership

and possession of those two lands and accused No. 2 Dinkar and accused No. 10 Pandurang contending that Vilas Pawar has executed sale deed in their favour in respect of those lands. Then accused No. 1 Dilip gave a report against Mangal for intrusion on their purchased land, due to which Mangal and others came to be arrested.

12. The incident of rape and assault etc. has occurred on 20.9.1987. Even at that time Mangal was asserting that the lands were in her possession, she had sown a certain variety of groundnut in that. Her claim was strongly refuted and denied by the accused. They had filed suit for injunction some time earlier against Mangal and the date of appearance in that suit was the next day which was next to the date of the incident.

13. On 20.9.1987 according to the prosecution Mangal went to the field along with her mother Anandibai. She found that accused Nos. 3 and 4 were carrying on some agricultural operations in the ground nut crop when Dattatraya - accused no.3 saw Mangal and her mother Anandibai, he went to village Shirala and soon returned with accused No.1 - Dilip,

accused No.2 Dinkar, accused No.5 Mahipati, accused No. 6 Sou. Shalan, accused No. 7 Sou. Shamal, accused No. 8 Sou. Kusum, accused no. 9 Smt. Putlabai etc. Accused was armed with gun, they obstructed Mangal and her mother and questioned them about their right in the land. They asked both these women to go away and accused No.1 Dilip gave threats of killing with gun. Mangal however refused to go and she continued her operations in the field. Then according to Mangal, all 9 accused started beating complainant Mangal and her mother Anandibai. Clothes of Mangal and her mother Anandibai were removed and they were made nude or naked in the open field, photographer was called and snaps were taken. Then accused No.1 Dilip ravished Mangal. Again photographs were taken. Then Mangal and her mother were beaten and the gun was used by accused No.1 to threaten Mangal and her mother Anandibai. Thereafter Mangal and her mother Anandibai went to Sangli. They reported the incident to the City police Station. They were referred for medical examination and then different offences came to be registered against all these accused. Investigation was started, panchnama was prepared, Mangal and her mother were examined. Clothes of Mangal were

seized, clothes of accused No.1 were taken, gun and stick were recovered muddemal property was sent to C.A. Photographs were also seized and then the charge sheet came to be filed against the accused.

14. Defence of the accused to all the charges was that they have been falsely implicated in this case. According to them, Vilas Pawar - the husband of Mangal has falsely implicated them in this case. According to them Vilas Pawar - husband of Mangal has voluntarily and out of his free own will, executed Sale Deed in their favour in April, 1987 and since that day they were in possession and they continued to possess and no force, fraud or coercion was practised on Vilas Pawar. Their names also came to be subsequently mutated in respect of these fields by the Revenue officers after giving notice to Mangal and Vilas or either of them. On the day of the incident Mangal had tried to forcibly exert her right in the field. There was Maramari between some female accused and Mangal and her mother Anandibai. Both sides received minor injuries and no incident of rape or beating by weapons or use of gun for threatening took place, but Mangal lodged a totally false report not only to tarnish the image

of the accused No.1 and the accused but to see that they are behind the bars for indefinite period because of the seriousness of the allegations.

15. The trial court found that the entire case of Mangal was false, bogus and concocted and therefore the trial court acquitted the accused of all the charges except holding accused No.1 guilty under section 3 r/w. 25 of the Arms and Explosives Act, 1959, and sentencing him to R.I. for one year and fine of Rs.1,000/- in default R.I. for six months. It is in this background that accused No.1 Dilip filed Appeal against conviction vide Criminal Appeal No. 807 of 1990. Mangal has filed Criminal Revision Application No. 4 of 1991 against acquittal of all the accused, and the State has filed Criminal Appeal No. 30 of 1991 against acquittal of all the accused.

16. We heard the learned APP for the State, Counsel for Mangal and Counsel for accused No.1 Dilip and other accused in their respective matters, at length. We were taken through the entire evidence and judgment. Photographs as stated above of Mangal and her mother Anandibai taken through the

so-called rape or assault were not before us, therefore by special order the photographs were called from the trial court and they were shown to the advocate for the accused and to the prosecution.

17. Counsel for the acquitted accused and convicted accused No.1 Dilip contended that the entire case of Mangal is false, bogus and concocted, on each count and on each charge and the trial court's order of acquittal is fully justified. It was also pointed out that when the trial court has rejected the prosecution case on 90 out of 100 points, then the court was not justified in convicting Accused No.1- Dilip for use of gun for the purpose of giving threats. Therefore, according to them accused No.1 Dilip was entitled for acquittal.

18. On the other hand, the learned APP and Counsel for the Mangal contended that the approach of the trial court is perverse. The trial court has not at all considered the seriousness of the charges levelled and has not considered the conduct of the parties and has come to a wrong conclusion of acquittal and therefore acquittal was required to be

set aside and other accused were liable to be convicted for all the offences and accused No.1 Dilip was liable to be sentenced for a major offence of rape. We have given our anxious consideration to the submissions made by the respective counsels.

19. In order to properly appreciate the case of the prosecution and evidence of Mangal and her mother Anandibai, it is better to classify the incident and situation as under:-

(i) Mangal claims that her husband was missing and during that period accused No.1 Dilip and accused No. 10 Pandurang obtained, by coercion or fraud a sale deed in respect of two lands in dispute. She also claims that inspite of the sale deed and/or agreement of sale she continued to be in possession of the land and was cultivating it in partnership and she had sown certain varieties of groundnut.

(ii) Mangal claims that on the date of the incident i.e. 20.9.1987 she had gone to the disputed land with her mother and other

ladies in exercise of her right of ownership and possession (ownership being of her husband) and at that time all the accused came there armed with weapon and accused No.1 was having gun.

(iii) Mangal claims that all the accused beat her and her mother Anandibai in the said agricultural land.

(iv) Mangal claims that the accused removed the clothes of her body and on the person of her mother Anandibai and made them nude and took photographs or caused them to be taken.

(v) Mangal claims thereafter in presence of all the accused and others, accused No.1 Dilip raped her.

(vi) Mangal claims that she was apprehensive that Shirala Police will not take her report properly and therefore she directly went to Sangli City Police Station and lodged her complaint.

20. So far as the point No. (i) i.e. **Mangal claims that her husband was missing and during that period accused No.1 Dilip and accused No. 10 Pandurang obtained, by coercion or fraud a sale deed in respect of two lands in dispute. She also claims that inspite of the sale deed and/or agreement of sale she continued to be in possession of the land and was cultivating it in partnership and she had sown certain varieties of groundnut,** is concerned, prosecution did not examine Vilas Pawar - husband of Mangal. He would have been a best person to tell whether he was kidnapped or abducted by the accused and whether they exerted force, pressure or coercion upon him and obtained the sale deeds of two properties by practising fraud. It was only the husband Vilas Pawar who had personal knowledge of the circumstances and the reason for which he executed the sale deed in favour of the accused. He would have also thrown light upon the consideration received by him from the accused from the sale of two lands and he would have been the best person to support Mangal whether possession was handed over pursuant to the sale deed and if not handed over inspite of the sale deed why it was not handed over and why anybody would enter into sale deed,

consideration and not received possession of the agricultural land. This aspect of the prosecution case is totally unproved, no explanation is given why Vilas was not examined. Similarly, according to Mangal these fields were being cultivated by her through partnership. None of those persons who were the partners in cultivation were examined by the prosecution. Further this so-called FIR lodged about missing of her husband and is executing sale deed or agreement for sale in favour of the accused is not produced on record. Mangal had further admitted that she had received notices from accused No.1 and one Mahadev about the sale deed.

21. According to Mangal when her husband was handed over to her, she learnt that PSI Dhumal and ASI Naikwadi beat her husband and compelled her to write a statement as per their directions and that her husband has made an application to the Circle Inspector, Islampur, that accused No. 2 Dinkar and one Mahadev obtained sale deed by force.

22. If this is so, examination of Vilas was most vital and essential. Admittedly, Vilas has not been examined. No satisfactory explanation is offered in

this regard by the prosecution and therefore adverse inference has to be drawn against prosecution and against Mangal and it has to be held that the entire story of husband missing, executing sale deed by force or fraud; he is being assaulted by the police officers and he has lodged complaint to the Circle Inspector about the sale deed, is false. Further, Mangal or her husband does not appear to have filed any suit till the date of recording evidence of Mangal and Anandibai for cancellation of those documents. There is nothing on record in this regard.

23. So far as point No.(ii) i.e. **Mangal claims that on the date of the incident i.e. 20.9.1987 she had gone to the disputed land with her mother and other ladies in exercise of her right of ownership and possession (ownership that being of her husband) and at that time all the accused came there armed with weapon and accused No.1 was having gun,** is concerned, in this regard also apart from the oral statement in court that she was possessing the land inspite of the sale deed by her husband and she was cultivating the field in 1987-88 in partnership, that she had sown variety of ground nut is also

required to be tested. In this respect Mangal herself admitted that accused No.2 had made complaint against her in the police and police had warned Mangal not to enter the land but when she refused and entered the land she was arrested by the police on 15.6.1987. She also admitted that after sowing, her mother and partners in cultivation were arrested along with herself and then they were released on bail by JMFC, Islampur. However, inspite of arrest on two occasions or may be one occasion, (the evidence is not clear in that regard) Mangal has audicity to contend that she still continue to cultivate the land. She also admitted that accused No.2 and Mahadev had filed a civil suit against her and at that time of the incident she was served with the summons of the suit.

24. Thereafter she admitted in cross-examination that neither she nor her husband filed any criminal complaint privately regarding fraudulently obtained sale deed. She then denied to have knowledge that on the basis of those sale deeds, the names of accused No.2 and the younger brother of accused No.1 Dilip came to be recorded as owners. She admitted that she had received summons in the suit to appear

in the court on the next date of the incident i.e. to appear on 21.9.1987. There is also an admission that before mutation of the names of the accused in respect of the suit land Mangal and her husband had received notices from the revenue officers. Therefore, when the question of possession is concerned except the bear version of Mangal supported by her mother Anandibai no evidence was tendered by the prosecution to show that on the date of the incident Mangal was in possession of the suit land. Execution of the sale deed and mutation in favour of the accused and not filing any kind of criminal or civil case challenging sale deed, clearly show that Vilas had accepted the fact of execution of sale deed and parting with possession but Mangal P.W. 9 with the help of her mother was asserting right of possession and trying to enter forcibly with no iota of right.

25. For proving the possession along with other aspects of the prosecution story, prosecution examined P.W 10 Anandibai - mother of Mangal, P.W. 11 Vithabai Shivram Kadam - partner of Mangal. So far as Anandibai - mother of Mangal is concerned, she is an old lady who came to reside with Mangal

only six months before. Her assertion of possession of lands by Mangal is of little consequence for all the reasons stated while scrutinising the evidence of Mangal.

26. Next witness is Vithabai Shivram Kadam P.W. 11 she has stated that lands of Vilas Pawar including the land called "Mothi" were cultivated by her and her son on profit sharing basis. They had sown and cultivated ground nut crop of two varieties in that field and at the time of the incident one variety i.e. Chaitrya was standing and another variety of groundnut crop was removed 5-6 days prior. The land called "Morabachi Patti" is adjacent to land called "Mothi" and the land called "Talyatil Patti" is at the distance of about 2 furlong. She further stated that on the date of the incident she, her daughter in law Akatai and Tanubai - wife of her brother in law gone to the land known as Mothi at about 2 p.m. for plucking the pods from the land called "Talyachi Patti" and she also went there for the same purpose. When they heard hue and cry from the land known as Mothi (according to Mangal the disputed land was known as Morabachi patti).

27. If the aforesaid evidence of Vithabai is scrutinised, it will be clear that she does not say that land of Vilas Pawar was cultivated by her and her sons along with Vilas Pawar and/or Mangal. She does not make any reference to Mangal or Vilas as partners in cultivation. It may be that Vithabai being 60 years old failed to state about this important fact and the mistake could be attributed to her age but apart from oral assertion of sharing the cultivation, evidence of Vithabai does not support the case of possession of the disputed land by Mangal. It will be clear therefore that the case of Mangal or Vilas being in possession of the disputed land does not get proved at all either from the evidence of Mangal, Anandibai or Vithhabai. It is true that this it is a criminal case and the fact of possession is not required to be proved as like the civil suit but there is absolutely no evidence in this regard. To the contrary, circumstances discussed above do point that the claim and contention of Mangal that she was in possession of land, is totally false. It is required to be noted here that as admitted by Mangal in her cross-examination, her husband Vilas is an educated

man, is an Arts Graduate and he was serving in Irrigation Department at Mangrule as clerk. She also admitted that her father in law was in police service till he retired at Bombay. If this was so then there is no explanation whatsoever why neither Mangal nor Vilas nor his father took any steps to get those sale deed set aside or oppose initially the mutation in the Record of Rights in the name of the accused in respect of the disputed field.

28. As regards point (iii) i.e. **Mangal claims that all the accused beat her and her mother in the said agricultural land** is concerned, there is some grain of truth in the case of prosecution, because Mangal was examined by doctor. Her medical certificate is at Exhibit 66 so also her mother Anandibai was also examined and her medical certificate is at Exhibit 67. Mangal has suffered the following injuries :

(1) Contusion over left front as thign,

(2) contusion on aluteal Region over (Lt.) Buttock,

(3) Contusion over back,

(4) scratch mark over (Lt.) Upper back, and

(5) contusions on over head on all region.

The size of three injuries are 6 cm. x 1 cm., 8 cm. x 5 cm. and 12 cm. x 1 cm. All the five injuries are simple, could be caused by hard and blunt object. Age of injury 24 hours. Examination of Mangal took place on 20.9.1987 at 8.50 p.m.

. So far as Anandibai, P.W. 10 is concerned, she had suffered three injuries i.e. 2 contusions and 1 tenderness, as follows:

The contusions were over both buttock and over (lt.) thigh lateral side and tenderness Over (Rt.) Temperal Region & Head.

Those were simple injuries, dimensions not given; could be caused by hard and blunt object and age of injuries 24 hours. She was examined at the same time and date i.e. 20.9.1987 at 8.50 p.m.

29. We have stated that there is only a grain of truth in regard to the third point i.e. of assault because the story narrated by Mangal and her mother

in their respective depositions is something very serious, grave and continuous assault and beating by as many as 9 accused with weapons like sticks, fist blows and kicks. Injuries noted by the doctor do not tally with the gravity tried to be brought out on record in the depositions by both Mangal and Anandibai.

30. In her evidence regarding this aspect of beating, Mangal P.W. 9 has stated that accused No.1 had rifle, accused No.3 had axe, accused Nos. 2, 4 and 5 had sticks. Then accused Nos.1 to 5 started beating her mother with sticks when Mangal intervened accused No.1 took stick from accused No.2 and started beating Mangal. Accused Nos. 2 to 5 also beat her with sticks. Female accused who were four in number started beating her with fists, blows and kicks. Mangal further stated that her face and face of her mother were swollen. She received injuries on her back and thigh. She had wheel marks over it. So also her mother. Then accused pushed her on the ground. Accused No.2 resumed beating her mother so also female accused also beat her mother, her mother was dragged for about 20 ft., accused No.1 pushed her on the ground, kicked her, accused

Nos. 3 and 4 lifted her and threw her on the ground.

31. The account of assault given by Anandibai P.W. 10 is that all the accused came to the field excluding accused No.10. They warned not to remove the groundnut crop and then they started beating. Accused No. 4 Hanmant gave blow of hunter to Anandibai, Accused No. 2 Dinkar gave two blows of his chappal to Anandibai, then Accused No.1 Dilip and accused No. 8 Sou. Kusum started beating Mangal, accused No.3 Dattatraya gave stick blow on her back, accused No.5 Mahipati beat her with kicks, accused No. 6 Shalan gagged her mouth by pressing, whereas accused Malan pushed her down and fell her on the ground, accused No. 9 Putalabai gave fists blow on her mouth, accused No. 8 Kusum pulled her hair, gave kick blows by lifting her. At the same time beating was going on to her daughter Mangal. She was dragged away by accused No.1 Dilip and accused No.8 Kusum at some distance. Then she has stated at the end of paragraph 3 that she had received injuries on head, back and thigh. her daughter Mangal has also received injuries and at that relevant time accused No.1 Dilip was armed with

gun, accused No. 4 Hanmant was armed with whip and other accused were armed with sticks excepting women accused.

32. Third witness P.W. 11 Vithabai has stated that she saw accused Nos. 1 to 9 beating Mangal and her mother Anandibai and were giving kicks to them. Accused no. 4 Hanmant and accused No.5 Mahipati had sticks, accused No. 3 Dattatraya had whip, accused No.1 Dilip had a gun. She intervened but she was also given a blow of stick and she had received injury on hand but it was not a bleeding injury.

33. If the account of beating given by three ladies P.W. 9 Mangal, P.W. 10 Anandibai and P.W. 11 Vithabai is seen, then it means that nine accused mercilessly beat Mangal and Anandibai. They used sticks, whips, kicks blows and fists beating also included dragging and since there was nobody to resist or oppose, the attack had continued for quite time according to both Mangal and Anandibai.

34. However, the medical reports of both Mangal and Anandibai do not support this story of serious and continuous blows and assault by sticks and other

weapons. Injuries received by Mangal and Anandibai are simple, nothing except contusions and abrasions. No bleeding injury, no injury to the face, no scratches, only a single scratch mark on the back of Manila. No haematoma and there is no medical certificate of Vithabai - P.W. 11 because she did not go to the doctor as her injury was not bleeding. It is therefore clear that Mangal and Anandibai have tried to exaggerate the story of beating to such an extent which makes their story totally unbelievable. No doubt there are certain injuries, as noted above, on the person of Mangal and Anandibai but as rightly held by the trial court, they are not because of beating of the accused but because of scuffle between the lady members from the side of the accused and from the side of Mangal, because 3 out of 4 lady members from the accused side have also received similar injuries that is evident from Exhibit 79. It is a medical certificate of Putalabai accused No. 9, the injuries are as follows:

(1) Contusion over Rt. infruscapulas region 1 x 1/2" in diameter Tenderness + Bluish to blackion in discolloursation.

(2) Contusion over medial aspect of Rt.

Elbow joint 1 x 1/2" in diameter. Movements of Rt. Eblow Painful and restricted.

(3) Contusion over shin of tibia at Junction of upper and middle 1/3 of Lt. leg tenderness.

35. As regards point No. (iv) i.e. **Mangal claims that the accused removed the clothes of her body and on person of her mother Anandibai and made them nude and took photographs or caused them to be taken**, is concerned, P.W. 9 Mangal has stated in continuation of story of beating as under:

"The accused pushed me on the ground. The accused No. 1 to 8 removed my saree and threw it in the sky. The accused continued the beating. By that time a photographer came. He was from Shirala. He snapped photographs as well as photographs of my mother after making us to sit..... I was wearing blouse and petticoat on my person. My mother had saree on her person at the time of snapping the photograph."

36. P.W. 10 Anandibai, the mother of Mangal P.W.9 in this regard has stated in continuation of the story of beating, as under:

"Beating was going on to my daughter. She was dragged away by accused - Kusum and accused - Dilip at some distance. They removed her saree and hurled it."

Then after giving story of rape, Anandibai says

> **"Accused Dilip got up after the rape, wore his clothes and took photograph of myself and my daughter."**

Vithabai P.W. 11 and women were cultivating the disputed land with Mangal in partnership, and who were present at the spot has stated that when she went to help Mangal and her mother, accused No. 9 Putlabai abused her, took the stick and tried to assault her, she started running but Putalabai chased her to drive her out. On the way she saw that accused No.3 Dattatraya instigated accused No. 8 Kusum to remove saree of P.W. 9 Mangal and her mother Anandibai P.W. 10. She removed their sarees and accused No.1 Dilp threw the same in the air. This is the oral version given about making Mangal nude or naked in the field and taking photographs.

37. In the FIR lodged by Mangal - P.W. 9, she has stated that when she went to the field the accused obstructed and asked her to go away from the land, abused her and then accused No.2 Dinkar and accused No.1 Dilip started beating her mother. She tried to intervene. She was also beaten **"Dilip removed my garments and then he snapped photographs**

as well as photographs of my mother after making us to sit." It will be clear from the FIR that though in the FIR Mangal has stated that Dilip removed her garments, story given in the evidence of P.W. 9 Mangal, her mother P.W. 10 Anandibai and P.W. 11 Vithabai is removal of saree only. There is nothing either in the FIR or in the evidence of any of the lady witnesses, namely, Mangal, Anandibai and Vithabai that all the clothes of the body of Mangal and Anandibai were removed and they were made nude or naked.

38. Story of photographer being there and taking photographs is something which is most mysterious part of the prosecution case and not at all explained satisfactorily. In FIR Mangal has stated that it was the accused no.1 Dilip who snapped the photographs of herself and her mother, but in her evidence Mangal has stated that while she was being beaten, a photographer came and he was from Shirala and he then took photographs, as stated above.

39. Admittedly, this is totally contradictory version of Mangal because in the FIR she has stated that it was accused No.1 Dilip who took the

photographs after removing her garments and in evidence she says that the photographer had come and taken the photographs. Anandibai - P.W. 10 mother of Mangal has stated in her evidence that **"Accused Dilip got up after the rape, wore the clothes and took photographers of herself and Mangal."** Now, this story given by Anandibai, is totally contradictory to the oral and ocular version of Mangal because according to Mangal the photographer from Shirala had come and took the photographs, whereas Anandibai her mother states that accused No.1 Dilip had taken those photographs.

40. We have observed that story of taking photographs is very mysterious because there is nothing on record to show that any of the accused were knowing that Mangal, Anandibai and Vithabai would be coming to the filed on that particular day at that particular time and therefore they were ready to take the photographs showing the trespass or encroachment. Admittedly, accused No.1 - Dilip had not taken the photographs because there is contradiction in the FIR, oral evidence of Mangal and oral evidence of Anandibai. If the photographer from Shirala had come and taken the photograph the

question is at whose instance he had come there. If the accused were not knowing or has no intimation that Mangal and Anandibai would be coming to the field at that particular time, then accused would not have given any intimation to the photographer to come to the filed at that particular time. And if the photographer from Shirala had come there while the incident was going on, the question is who gave intimation to him to come to the field. This part is totally unexplained by the prosecution. Photographer is not examined though his name was mentioned to the Investigating agency, no explanation is given why he is not examined. And if according to Mangal and her mother Anandibai and from the tone and tenor of their FIR, photographs were being taken by accused No.1 Dilip or at his instance then it was absolutely necessary for the prosecution to call and examine the photographer, but nothing is done by the prosecution in this regard.

41. We have discussed and noted the story of Mangal and her mother Anandibai that they were made nude, is totally false and fabricated. Further story that after the rape, Dilip took photographs,

is also falsified because of the FIR and the oral evidence of Mangal, discussed above.

42. Next point for consideration i.e. point No. (v) i.e. **Mangal claims thereafter in presence of all the accused and others accused No.1 Dilip raped her**, is concerned, In the FIR lodged by Mangal, Exhibit 46 Mangal has stated :

> **"Dilip removed my garments and then he snapped photographs as well as photographs of my mother after making us to sit. Dilip lifted and threw me on the ground. Then he committed coitus with me against my will and committed rape on me."**

In her evidence P.W. 9 Mangal has stated after taking photographs beating was given to both Mangal and her mother Anandibai :

> **"The accused No.1 pushed me on the ground. He kicked me. The accused no. 3 and 4 lifted and threw me on the ground. The accused No.1 lifted my petticoat and committed rape on me. The accused 3 to 5 stood near us so that I should not rise. The accused No.1 had put rifle on my chest. The accused No.1 said to me that he would kill me if I shouted. He committed coitus with me against my will."**

43. Anandibai P.W. 10 mother of Mangal (P.W. 9) in her evidence has stated after beating by all

the accused:

> **"She was dragged away by accused -Kusum and accused - Dilip at some distance. They removed her saree and hurled it. I saw that accused - Dilip, thereafter, raped her in the field itself. I was held by the women accused present before the Court, and, therefore I could not go to her help. Accused - Dilip got up after the rape, wore his clothes and took photograph of myself and my daughter."**

44. P.W. 11 Vithabai does not speak anything about the rape because she was driven away. She only saw while running that saree of Mangal was removed and Dilip threw it in the air.

45. In order to give corroboration to the story of Mangal about rape, prosecution produced certificate regarding examination of Mangal with reference to allegations of rape. It is Exhibit 65. Relevant portion is reproduced hereinbelow:

> **Genital Exam:-**
>
> **1) Ubic hair well developed, no matting**
> **No bleeding or discharge**
> **No signs or injury over valva**
> **No signs or Inulammaijor**
> **No stains over vulva or things**
>
> **Per Speculum Exam :**
>
> **Vaginal Introitus patulous**

Vaginal wall healthy
No discharge or bleeding
Cervix:- downwards & backwards - healthy
No crosion - discharge.

Per vaginas Exam:-

Cervix downwards & backwards - healthy.
Uterus retroverted, just bulkey & was fire,
Uirm, mohile
Farnices, Free, No mall

Impression : Vagina is capable as having intercourse."

So far as medical certificates Exhibits 65, 66 and 67 are concerned, prosecution examined Medical Officer P.W. 12 Digambar Vithal Dayal and at that time those certificates were admitted by the defence as per list Exhibit 16 and therefore the witness was called only for the purpose of cross-examination. This has been noted by the trial court. Then in the cross-examination Medical officer has stated that: **"When P.W. Mangal and P.W. Anandibai came to the hospital along with request letter (yadi) on 20.9.1987 for the first time then only complaint of beating was made by them."** This will show that in the initial complaint to the doctor no history of rape was given by Mangal.

46. P.W. 1 Venkat Devappa Madrasi was examined by the prosecution to prove the panchnama about the

recovery of clothes of victim Mangal vide panchnama Exhibit 27. Those clothes at the time of evidence are one white blouse with 5 buttons on front side and back side dirty old in use, one petticoat parrot, aenal coloured with string having mud stains, old in use, one nylon sari faint Amboli colour printed 6 wari torned on middle part stitched with machine. It is printed saree. In the panchnama there is no mention of any blood stains on any of the three clothes. This does not show any kind of injury on the person of Mangal related to the allegations of rape, particularly, no injuries whatsoever on the private parts of Mangal.

47. So far as clothes of Mangal are concerned, C.A. report is Exhibit 17, blouse was found to have few blood stains, petticoat had few blood stains spread at lower end. It has one semen stain of about 2 cm. in diameter on front - middle portion. On saree no blood was detected. Exhibits 1 and 2 i.e. blouse and petticoat were stained with blood of 'A' group. Exhibit 18 which is C.A. report about Vaginal smear, vaginal swab and pubic hair etc. is totally negative. Item No.4 blood stained cloth wrapped in paper labelled Mangal Pawar, blood

of ’A’ group was found.

48. So far as clothes of the accused, particularly accused No.1 Dilip, C.A. report is at Exhibit 21. Clothes are, full pant, half bush shirt and underwear, but there is no blood nor semen on any of these clothes.

49. The question is whether the story of rape is real, genuine and true or false, fabricated and concocted. After scanning the entire evidence, the trial court has come to a positive conclusion that it is a false, bogus and concocted story and we have no alternative but to accept those findings. There are in all 10 accused, accused No.10 Pandurang Maruti Kadam is the father of accused No.1 Dilip. He was not present at the spot, therefore 9 accused were there. Accused No. 9 Putalabai is the grand mother of accused No.1 Dilip she was aged 70 years and one of the accused No.7 Shamal Kadam is the paternal aunt of accused No.1 Dilip. Then according to the prosecution Mangal was accompanied by Vithabai, her mother Anandibai and two more ladies were also there. The question is whether accused No.1 - Dilip would have courage and daring to commit

rape upon Mangal in the presence of his grand mother and aunt, and for what purpose and motive. So far as the property is concerned accused No.1 - Dilip has with him agreement for sale, which was not challenged by Mangal or her husband till the date of incident in any civil or criminal court. Accused No.1 Dilip had also with him mutation of his name in the Government Revenue Record in respect of the disputed field. He was also in possession of land and twice in the past upon his report Mangal and her mother Anandibai and others were arrested and police had warned them not to enter the field of accused No.1 Dilip. If at all therefore Dilip wanted that Mangal should not forcibly enter the field, the only thing that was necessary to drive away Mangal and her mother Anandibai and so-called partners who were all female from field, so-called beating given by them was sufficient to deter Mangal and her mother Anandibai from entering the field and therefore in that view of the matter, there does not appear to be any cogent reason for accused No.1 Dilip to commit rape upon Mangal. Absence of any injuries on the private parts of Mangal totally falsifies her story of rape. Secondly, there are agricultural lands surrounding these fields, other agriculturists were

present in their respective lands, their labourers must also be present and therefore it is impossible to believe that in broad day in a place accessible and visible to everybody and when out of 8 other accused and 4-5 ladies from the complainant side were present, accused No.1 Dilip would commit rape upon Mangal for no rhyme or reason.

50. The evidence does not show any kind of injury on the person of Mangal relating to the allegations of rape, particularly, no injuries whatsoever on the private part of Mangal. Apart from this, as per C.A. Report Exhibit 18, no semens was detected on the smear and swab, on the sample of pubic hair collected from the private parts of Mangal.

51. Further, if the conduct of Mangal and her mother Anandibai after the incident is considered, it creates not only strong doubt about her testimony but it shatters her case of rape by accused no.1. In her cross-examination, Mangal has admitted that her husband was on leave and he was in the house on the date of the incident. This admission is given in paragraph 5 of cross-examination by Mangal. She

nowhere states either in the examination in chief or in cross-examination that after the incident of beating, removing clothes, taking photographs and rape was over, she came to her house and reported the matter to the husband. In fact, a married woman like Mangal was expected to narrate this ghastly incident first to her husband and then to the police station. But what she has stated in her evidence is that she came back to village after putting her on saree, took her youngest son and mother and came to Sangli. She does not explain why she did not meet her husband and told him about this rape etc. and why he is not taken into confidence before going to the police. This is most unnatural behaviour of Mangal. Thereafter, she did not go to Shirala Police Station in whose jurisdiction so-called offence was committed but she directly went to Sangli City Police. There also Mangal took the help of so-called social workers Leelatai Jadhav and Hemlata Kothari, who were office bearers of Mahila Mandal at Sangli. I.O. has not been able to explain as to why signature of Hemlata Kothari was taken on the FIR. All this behaviour of Mangal, clearly shows that she has cooked up story of rape only to take revenge upon the accused to convert

incident into a serious one and to level grave allegations against the accused, so that they are required to suffer for those allegations of rape. Trial court found that the allegations made by Mangal in her FIR are scurrilous, exaggerated and unfounded in order to frame the accused. The court has rightly come to the conclusion that but for the intervention of the social workers the police would not have recorded such a report against the accused at the instance of Mangal.

52. In paragraph 16 we have referred to the photographs which Mangal and her mother Anandibai alleged that they were taken. Those photographs were marked Article ’8’. Those photographs were also perused by the trial court and the trial court rightly came to the conclusion that from the photographs it cannot be said that any ghastly incident of rape or removing clothes of Mangal and her mother Anandibai ever took place in the field. We have expressed our strong doubt about the theory of the prosecution that photographs were taken at the instance of the accused. Facial expressions of Mangal and her mother Anandibai in the photographs do not show that they had undergone any trauma of

being made nude in public in agricultural land before so many persons or being required to face offence of rape at the instance of accused. The photographs show that Mangal and her mother Anandibai are in normal mood; they are sitting in their field. Mangal wearing peticoat and blouse and Anandibai wearing saree. No attempt is made by Mangal to hide her face, if anything like making them nude in public had ever taken place. Therefore photographs also falsify the story of the prosecution of rape and nuding.

53. So far as point No. (vi) i.e. **Mangal claims that she was apprehensive that Shirala Police will not take her report properly and therefore she directly went to Sangli City Police Station and lodged her complaint,** is concerned, the fact remains that Mangal did not lodge complaint to Shirala Police. It might be that because earlier on the report of accused No.1 Dilip she was arrested and warned not to enter the field but that action of the accused on the part of Shirala Police cannot be said to be baseless, because accused No.1 Dilip was armed with registered sale deed and mutation entry in his favour. Therefore, not going to Shirala Police

station and directly going to Sangli City Police was clearly with a view to set the police machinery in motion because Sangli police would not be knowing about the background of the situation. It is also clear that Mangal was knowing about social workers, she wanted to exert influence upon the police for lodging her FIR and therefore with an oblique motive, she went to Sangli Police. From the aforesaid discussion, it will be clear that Mangal with the help of her mother lodged a totally false, bogus and concocted FIR with a view to falsely implicate the accused. The entire prosecution case is totally baseless and false and the order of acquittal of the accused is required to be upheld. So far as conviction of accused No.1 is concerned under the Arms Act, we are not inclined to upheld the conviction. When the incident itself is false and bogus and there is no independent corroboration to the testimony of Mangal and Anandibai about the use of gun by accused No.1 Dilip then his conviction cannot be sustained. Mangal and her mother Anandibai are bent upon seeing that accused suffer severally because of her allegations and therefore upholding the conviction of accused No.1 under the Arms Act, would add insult to the injury. The

findings of the trial court in that regard cannot be upheld.

54. The matter according to us does not end / rest in dismissing the Appeal against the acquittal filed by the State or dismissing the Revision filed by Mangal against acquittal. This is a case where Mangal has set the machinery of law into motion with an oblique motive of making serious and grave allegations against the accused. They have been made to suffer because of those allegations. Dilip - Accused No.1 in particular must have been required to be in custody for quite long time because of those allegations of rape. All these allegations of beating, assault, denuding, taking photographs and then committing rape were made deliberately, intentionally with an ulterior motive of desisting the accused from entering the disputed field therefore for petty gain or for gains of property, Mangal went to the extent of ruining, spoiling and damaging the reputation of family, therefore this is a case which requires interference of the court in awarding adequate compensation to the accused No.1 Dilip.

55. Section 250 of the Criminal Procedure Code gives powers to the Magistrate to award compensation to the accused, if he is of the opinion that there was no reasonable ground for making the accusation against the accused. Section requires the Magistrate to follow procedure and then to award compensation. It should not exceed the amount of fine which he is empowered to determine and impose. The Magistrate can also order under sub section 3 of the said Section that in default of payment of compensation, person shall undergo simple imprisonment for a term not exceeding thirty days.

56. The powers of the Appellate Court are provided under Section 386 of the Criminal Procedure Code. Sub Section (e) of Section 386 empowers the Appellate Court to "**make any amendment or any consequential or incidental order that may be just or proper.**"

57. When we heard this argument and when we heard the Advocate for Mangal Vilas Pawar in Criminal Revision Application No. 4 of 1991 against acquittal, we told the Advocate that if the case of the Mangal was found to be false as found by the

trial court, then we would be awarding compensation to accused No.1 Dilip Pandurang Kadam.

58. This is therefore a case where the trial court found that case of Mangal Vilas Pawar was totally false, bogus and concocted and the serious charges of rape were scurrilous, exaggerated and unfounded in order to frame the accused. By independent appreciation of evidence we have also come to the same conclusion. There is no doubt that because of those allegations of rape all the accused and particularly accused No.1 Dilip was required to suffer seriously in his reputation, he must have been detained because of these allegations, and, therefore, in our considered opinion, this is a fit case to award not only adequate compensation but heavy compensation to accused No.1 Dilip Pandurang Kadam, which complainant Mangal Vilas Pawar will have to pay. The limitation of awarding compensation is that it should not exceed the amount of fine which the Magistrate or the trial court is entitled to impose. The offences with which the accused were charged amongst others were 147, 149 and so far as accused No.1 Dilip is concerned they were 376 of the IPC. Punishment then prescribed for

offence under Section 376 is minimum 7 years but which can extend to life or for a term which may extend to 10 years and fine. No outer limit is fixed or prescribed for the amount of fine that the court can impose and therefore looking to the gravity of the offences, attitude and tendency of Mangal, compensation of Rs.50,000/- would be adequate and proper, not only adequate and proper but would be necessary in this case. Therefore, we pass the following order:

ORDER

1. Criminal Appeal No. 30 of 1991 filed by the State against acquittal so also Criminal Revision Application No. 4 of 1991 filed by Complainant Mangal Vilas Pawar, are dismissed.

2. Criminal Appeal No. 807 of 1990 filed by accused No.1 Dilip Pandurang Kadam is allowed. His conviction under section 3 r/w. 25 of the Arms and Explosives Act, 1959 is set aside and he is acquitted of the said charge.

3. Bail bonds of all the accused stand

cancelled.

4. Complainant Smt. Mangal Vilas Pawar shall pay compensation of Rs.50,000/- (Rupees Fifty Thousand) to accused No.1 Dilip Pandurang Kadam under the provisions of the Criminal Procedure Code, for levelling false, baseless, reckless scurrilous allegations of rape against him, within three months from today. If she does not pay the compensation she will have to undergo simple imprisonment for three months.

(D. G. DESHPANDE, J.)

(S. R. SATHE, J.)